BATU KAWAN BHD

v.

PENTADBIR TANAH DAERAH SEBERANG PERAI SELATAN

COURT OF APPEAL, KUALA LUMPUR
NH CHAN JCA
ABU MANSOR ALI JCA
ABDUL MALEK AHMAD JCA
[CIVIL APPEAL NO: P-01-180-95]
25 APRIL 1998

LAND LAW: *Acquisition of land - Award - Award of compensation - Appeal against such award - Potential development value - Whether land had immediate potential*

This was an appeal against the award of compensation of RM15,000 per acre given by the learned judge in respect of a piece of land situated in Pulau Batu Kawan ('the land').

Pulau Batu Kawan ('the island') is approximately 27km to the south of Butterworth town. One has to resort to using the ferry to get to the island. At the time of the government valuer's visit, a bridge to the island was being built by the JKR. A section of the island was being planted with palm oil and some areas with rubber and some areas with fruit trees.

The town planner was unable to see how the land could have good development potential because of the short-comings of the land and the surrounding areas as described above. However, according to the appellant's valuer, the land had good potential as industrial land.

The issue for consideration was whether the land had immediate potential or whether such potential was remote.

Held:
Per Abu Mansor Ali JCA

[1] In view of its conditions and location and the poor communication with the mainland the land had only remote potential. All things considered, the award of RM15,000 per acre was fair.

[Appeal dismissed.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Ini merayukan rayuan terhadap award pampasan sebanyak RM15,000 se ekar yang telah diberikan oleh hakim yang bijaksana berhubung dengan sebidang tanah yang terletak di Pulau Batu Kawan ('tanah tersebut').

Pulau Batu Kawan ('pulau tersebut') adalah kira-kira 27km selatan bandar Butterworth. Seseorang terpaksa menggunakan feri untuk sampai ke pulau tersebut. Semasa lawatan penilai kerajaan, suatu jambatan sedang dibina oleh JKR. Sebahagian pulau tersebut sedang ditanami pokok kelapa sawit dan bahagian lain adalah ditanami pokok getah dan sebahagian lagi ditanam dengan pokok buah-buahan. Perancang bandar tidak dapat menggambarkan bagaimana tanah tersebut boleh mempunyai potensi pembangunan yang baik berdasarkan kekurangan-kekurangan tanah tersebut, kawasan sekitarnya seperti yang diterangkan. Walaubagaimanapun, menurut penilai bagi pihak perayu, tanah tersebut mempunyai potensi baik sebagai tanah perindustrian. Isu untuk dipertimbangkan adalah samada tanah tersebut mempunyai potensi segera ataupun potensi yang jauh diperlihatkan.

Diputuskan:
Oleh Abu Mansor Ali HMR

[1] Memandangkan keadaannya dan lokasi serta perhubungan yang amat berkurangan daripada tanah besar, tanah tersebut mempunyai potensi yang remote. Semua faktor dipertimbangkan, award RM15,000 seekar adalah adil.

[Rayuan ditolak.]

For the appellant - Ghazi Ishak (Edward Andrew with him); M/s Ghazi & Lim
For the respondent - Dato' Alizatul Khair Osman Khairuddin SLA

[Appeal from High Court, Pulau Pinang; Land Reference No: 15-1-93]

Reported by Ling Hea Hoon

JUDGMENT

Abu Mansor Ali JCA:

We have dismissed the appeal of the appellant/applicant against the award of compensation of RM15,000.00 per acre given by the learned judge on 9 October 1995. We heard arguments and unanimously rejected the appeal holding that the compensation awarded was fair and reasonable.

The subject land is situated in Pulau Batu Kawan approximately 27 kilometres to the south of Butterworth town. It is separated from the mainland by Sungai Jejawi in the north and in the south is Sungai Tengah and to the west is the Straits of Melaka. To get to Pulau Batu Kawan one has to resort to using the ferry from Bukit Tambun to Pengkalan Utama Batu Kawan. A bridge was at the relevant time yet to be built. A section of Batu Kawan Estate is planted with palm oil and some areas were under rubber and some areas under fruit trees or dusun.

The material date when the government valuer inspected the subject land was on 11 October 1990. He visited the subject land again on 16 October 1990. A private valuer made visits to the subject land on 22 and 30 April 1991.

What could be gathered from the government valuer's report was that the island's communication with the mainland was by ferry provided free of charge by the government. The ferry was in service for 12 hours a day and 5 vehicles could be transported across at a time. At the time of the government valuer's visit a bridge to the island was being built by the JKR and in October 1990 it was 20% completed and it was scheduled to be ready in April 1992 or thereabouts.

According to the town planner the use of the subject land was for agriculture and the highest use was for animal husbandry. In his opinion the planner was unable to see how the subject land could have a good development potential because of the then short-comings of the subject land and the surrounding areas as described above.

Based on his opinion that the land was for agriculture, the government valuer gave the land value as follows:

Lot	Se ekar
274	RM7,284.50
126, 248, 252 & 235	RM7,689.19
135	RM14,164.30

Before the learned trial judge, the parties did not call any witness but applied to put in written submissions. In his written submissions, the appellant submitted that the subject land, according to valuer Talhar & Wong, had good potential as industrial land which fact was not denied by the State Legal Adviser on behalf of the Collector but the material consideration was whether the subject land had immediate potential or the potential was remote. It cannot be denied that whatever potential the subject land had, in view of its conditions and location and the poor communication at the time of inspection from the mainland, must and had to be considered as remote.

The learned judge in the court below observed that on 13 September 1995 Mokhtar bin Hj. Sidin J (as he was then) had considered in another case the value of a piece of land Lot 272 in the same area in Batu Kawan similar, in all respects ie, in size etc to the subject land in the present appeal. Mokhtar bin Hj. Sidin J fixed the value of the land in the case before him at RM15,000.

The applicants were told by the learned judge at first instance that he was mindful of following Mokhtar bin Hj. Sidin J and he adjourned the hearing to 18 September 1995 if parties wanted to make further submissions and to bring witnesses if they so wish. The result was counsel for the appellant Encik Ghazi bin Ishak chose not to add anything more and the learned State Legal Adviser pointed to the court that the subject land, in this appeal, was smaller in size than that of the land acquired in the judgment of Mokhtar bin Hj. Sidin J. The learned judge in the present appeal decided to fix the value of the subject land also at RM15,000 per acre giving his reason for awarding RM15,000 per acre for the whole land irrespective of their size, unlike what the Collector did and after considering their potentiality for development.

It is also to be noted that the learned trial judge in making an award of RM15,000 per acre had adhered to the principle that the smaller the lot the better is the price when sold to a willing buyer.

The learned trial judge considered that the claim of the applicant for RM40,000 per acre was not appropriate having in mind the land presently could be used for agriculture and its remoteness as the bridge being built was still under construction and not ready and the best potential for the land was for animal husbandry. In short the learned trial judge held that the value of the land could not be equated to mainland land in Seberang Perai. For want of any suitable comparable compensation to assess the subject land in Batu Kawan the learned trial judge relied on the land acquisition of land in Bertam Estate, Seberang Perai, where 330 acres in area was acquired in 1981 where the award was fixed at RM13,000 per acre and finally settled at RM15,000 per acre. The said land in Bertam Estate was far better located then the land in our appeal and the learned trial judge held that the award of RM15,000 was fair all things considered.

We were unanimous in agreeing with the learned trial judge and after hearing and considering the submissions of learned counsel for the appellant we concluded that he failed to persuade us and we upheld the submission of the learned State Legal Adviser for the respondent. As we said we were unanimous in holding that there is no good or valid reason why we should disturb the well considered judgment of the learned trial judge. Hence we dismiss the appeal with costs to the respondent.